



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 7/05/05

AGENDA ITEM 6

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: Campaign Contribution Limits

RECOMMENDATION:

It is recommended that the City Council introduce the attached ordinance amending Chapter 2, Article 13 of the Hayward Municipal Code relating to campaign contribution limits.

BACKGROUND:

In October of 2002, the City Council added Article 13 to Chapter 2 of the Hayward Municipal Code. The addition established a voluntary expenditure limit of \$50,000 with annual CPI adjustments for local municipal elections and varying contribution limits for candidates. A contribution cap of \$250 was set for those candidates who do not accept the voluntary expenditure limit and a cap of \$1,000 was set for those who do agree to the expenditure limit.

The addition also contained provisions for criminal, civil and administrative penalties in the event there were violations of the Municipal Code provisions. Since violations of City Ordinances are deemed to be misdemeanors, they carry a penalty of up to \$1,000. In addition, this amendment also established an administrative or civil penalty of up to \$1,000 for each violation. To comply with the requirements of due process, the Municipal Code requires that notice of a violation be given and a hearing be conducted prior to the imposition of an administrative penalty. As the designated official for conducting municipal elections, the City Clerk is responsible for initiating a review process if evidence of a potential violation is presented to his/her Office. Upon receipt of such evidence, the Clerk is required to meet with the City Attorney to determine if probable cause exists to either forward the matter to the District Attorney for possible criminal prosecution or appoint independent counsel to serve as a hearing officer. If a hearing officer is appointed, all proceedings must be conducted pursuant to the Administrative Procedures Act contained in the Government Code.

The 2004 Municipal Election was the City's first experience with the above discussed expenditure and contribution limits. At the close of the nomination period, thirteen candidates had filed papers with the City Clerk. All of the candidates agreed to the City's expenditure limit and therefore all contributions were subject to the \$1,000 limit. A copy of the reported expenditures for the candidates is attached hereto. As you will note, expenditures ranged from \$1,000 on the low end to \$46,000 on the high end. Hence, each of the candidates spent less than the established limit of \$50,000.

During the course of the campaign, both my office and the City Clerk received inquiries regarding the interpretation and application of the contribution limitation. Both candidates and contributors asked about the absence of an aggregation provision in the legislation. Specifically, we were asked if multiple business entities, controlled by the same individuals, could make separate \$1,000 contributions to a candidate from each of their business entities. Since our regulations do not contain an aggregation provision, we advised that such multiple \$1,000 donations would not constitute a clear violation of the contribution limit. Hence, no criminal or civil penalties would be pursued. In addition, some candidates asked how to value in-kind contributions. For example, should market value or actual cost be used? Again, we advised that since the regulations were silent on the treatment of in-kind donations, criminal prosecution and/or the imposition of a civil penalty would not be warranted based upon the method of valuation used. Finally, we experienced a problem with the "Notification Requirement" contained in the legislation. To wit, Section 2-13.03 requires the City Clerk to "...prominently publish in the voter information portion of the sample ballot those candidates who have voluntarily agreed to the expenditure limits." Unfortunately, since our elections are consolidated with the County, only candidates and their statements were allowed.

At two recent work sessions, the Council considered potential modifications to the City's Campaign Contribution and Spending Limits legislation and directed staff to craft amendments that would provide guidance in the areas where questions were raised during the 2004 campaign. Consistent with that direction, staff has prepared the attached ordinance for introduction.

If adopted, the modifications will impact the City's existing regulations in following ways:

1. The addition of an aggregation provision will provide that contributions made by entities that are majority owned or controlled by any person or entity shall be aggregated so that the total of such contributions will not exceed the \$1,000 limit currently contained in the Municipal Code.
2. The inclusion of a broad definition of the term "Contribution" will make it clear that the contribution limits apply to loans as well as in-kind contributions. The modification may, if Council desires, establish the value of in-kind contributions as the actual cost and exclude volunteer labor or services from the definition of "Contribution".
3. Beginning January 1, 2006 the limits established for contributions will be adjusted annually to reflect changes in the Consumer Price Index.
4. Section 2-13.03 will be modified to require the City Clerk to publish a list of the candidates and whether such candidates have agreed to the voluntary spending limit. The list may be published on the City's websight.

5. "Election Term" and "Election Contest" will be more specifically defined to provide that an election contest shall begin the day following a municipal election for City Elective Office and terminate on the day of the next election for City Elective Office. A candidate may apply for an extension of the term of an election contest (up to 180 days) to collect funds and retire unpaid debt. In addition, the modification will exempt surplus funds, collected but not expended, from the contribution limit.

CONCLUSION:


If the Council determines that the modifications of the City's Campaign Spending and Contribution Limit contained in the attached Ordinance are appropriate, the same should be introduced.

Prepared by:



Michael J. O'Toole, City Attorney

Approved by:



Jesús Armas, City Manager

DRAFT

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 2, ARTICLE 13 OF THE HAYWARD MUNICIPAL CODE RELATING TO CAMPAIGN CONTRIBUTION AND EXPENDITURE LIMITS

THE CITY COUNCIL OF THE CITY OF HAYWARD does hereby ordain as follows:

Section 1 Section 2-13.02.01 is hereby added to Article 13, Chapter 2 of the Hayward Municipal Code to read as follows:

“SEC. 2-13.02.01 CONTRIBUTION DEFINED.

“Contribution” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates. The term “contribution” includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this Article. The term “contribution” further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term “contribution” shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term “contribution” include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is not more than fifty dollars.

Section 2: Section 2-13.02.02 is hereby added to Article 13, Chapter 2, of the Hayward Municipal Code to read as follows:

“SEC. 2-13.02.02 AGGREGATION OF CONTRIBUTIONS.

Aggregation of Contributions

- (a) For the purposes of the contribution limits of this Article, the following terms shall have the following meanings:

- (1) "Entity" shall mean any person other than an individual.
- (2) "Majority owned" shall mean any ownership of more than 50%.
- (b) The contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.
- (c) Contributions that are made by entities that are majority owned by any individual shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person.
- (d) Contributions made by a husband and wife shall not be aggregated.

Section 3: Section 2-13.03 of Article 13, Chapter 2, of the Hayward Municipal Code is hereby amended to read as follows:

"SEC. 2-13.03 NOTIFICATION TO VOTERS.

The City Clerk shall publish a listing of candidates for office and indicate whether such candidates have agreed to the voluntary spending limit. The list may be published on the City's web site."

Section 4: Section 2-13.01 of Article 13, Chapter 2, of the Hayward Municipal Code is hereby added to subdivision (d) to read as follows:

"(d) Beginning January 1, 2006 the amounts established by this section shall be adjusted annually by a percentage equal to the San Francisco Bay Area All Urban Consumer Price Index (CPI). The City Clerk shall calculate such increase and post the contribution limit in a visible place in the City Clerk's Office."

Section 5: Section 2-13.02 of Article 13, Chapter 2, of the Hayward Municipal Code is hereby added to subdivision (c) to read as follows:

"(c) Beginning January 1, 2006 the amounts established by this section shall be adjusted annually by a percentage equal to the San Francisco Bay Area All Urban Consumer Price Index (CPI). The City Clerk shall calculate such increase and post the contribution limit in a visible place in the City Clerk's Office."

Section 6: Section 2-13.07 is hereby added to Article 13, Chapter 2, of the Hayward Municipal Code to read as follows:

"SEC. 2-13.07 ELECTION CONTEST AND ELECTION TERM.

(a) The provisions of this Article be applicable to each City of Hayward Municipal election contest for City Elective Office as defined in Section 2-13.00. Such limits shall not be applicable to recall elections. For the purposes of this Article an election contest shall commence the day following a municipal election for City Elective Office and terminate on the day of the next election for City Elective Office.

(b) Notwithstanding subdivision (a) of this section, an election contest term may be extended for a period not to exceed 180 days to allow a candidate to collect funds for the purpose of retiring unpaid debt from the previous election contest. A candidate desiring to extend an election term must file a written notice with the City Clerk within ten days of the election for which the candidate desires to have the term extended. All funds collected to retire the debt referred to in this subdivision shall be subject to the contribution limitations established for the election contest whose term is being extended.

(c) Surplus funds collected and not expended by a candidate for a City Elective Office may be utilized in any subsequent election for a City Elective Office. Such funds shall not be counted as contributions for the purposes of this Article."

Section 7. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 8. In accordance with Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 200, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ____ day of _____, 2005, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ARTICLE 13

CAMPAIGN CONTRIBUTION LIMITS AND EXPENDITURE LIMITATIONS FOR CITY ELECTIVE OFFICES

(Repealed and Replaced by Ordinance 02-19, adopted October 29, 2002)

SEC. 2-13.00. VOLUNTARY EXPENDITURE LIMITS FOR CAMPAIGNS FOR CITY ELECTIVE OFFICES.

- (a) A voluntary expenditure limit of \$50,000 per candidate is hereby established for each election to City elective office. As used in this section, the term "City elective office" shall mean the offices of Members of the City Council and Mayor. Beginning January 1, 2004, the amount established by this section shall be adjusted by a percentage equal to the San Francisco Bay Area All Urban Consumer Price Index (CPI). The City Clerk shall calculate such increase and post the expenditure limit in a visible place in the City Clerk's Office.
- (b) Prior to accepting any contribution for a campaign, each candidate for City elective office shall file with the Hayward City Clerk statement of acceptance or rejection of the voluntary expenditure limit established herein with regard to that campaign.
- (c) No candidate for City elective office who accepts the voluntary expenditure limit established herein and no controlled campaign committee of such a candidate shall make campaign expenditures cumulatively in excess of the voluntary expenditure limit established herein.
- (d) Each candidate for City elective office who rejects the voluntary expenditure limit established herein shall be subject to the contribution limit set forth in Section 2-13.01 of this Article as that section may be amended from time to time.
- (e) Each candidate for City elective office who accepts the voluntary expenditure limit established herein shall be subject to the contribution limit set forth in Section 2-13.02 of this Article as that section may be amended from time to time.

SEC. 2-13.01 LIMITATION OF CONTRIBUTIONS.

- (a) Except as provided hereafter in Section 2-13.02 of this Article, no person shall make to any candidate for City elective office, or the candidate's controlled committee, a contribution or contributions totaling more than two hundred and fifty

dollars (\$250) for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.

- (b) Except as provided hereafter in Section 2-13.02 of this Article, no candidate running for City elective office, or the candidate's controlled committee, shall accept a contribution or contributions totaling more than two hundred and fifty dollars (\$250) per contributor for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.
- (c) For the purposes of this section and section 2-13.02 the term person shall include corporations, businesses, partnerships, associations, groups and committees.

SEC. 2-13.02 CONTRIBUTION LIMITATIONS FOR CANDIDATES ACCEPTING EXPENDITURE LIMITATIONS.

- (a) Notwithstanding Section 2-13.01, if a candidate accepts the expenditure limit set forth in section 2-13.00 (a) of this Article no person shall make to any candidate for City elective office, or the candidate's controlled committee, a contribution or contributions totaling more than one thousand dollars (\$1000) for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.
- (b) Notwithstanding Section 2-13.01, if a candidate accepts the expenditure limit set forth in section 2-13.00 (a) of this Article, no candidate running for City elective office, or the candidate's controlled committee, shall accept a contribution or contributions totaling more than one thousand dollars (\$1000) per person for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.

SEC. 2-13.03 NOTIFICATION TO VOTERS.

The City Clerk shall prominently designate in the voter information portion of the sample ballot those candidates who have voluntarily agreed to expenditure limits.

SEC. 2-13.04 ENFORCEMENT AND PENALTIES.

- (a) Any person who knowingly or willfully violates any provision of this Article is guilty of a misdemeanor.
- (b) In addition to other penalties provided by law, a fine of up to one thousand dollars (\$1,000) for each violation of this Article may be imposed.

- (c) Prosecution for violations of this title must be commenced within four years of the date on which the violation occurred.

SEC. 2-13.05 CIVIL LIABILITY FOR VIOLATIONS.

- (a) Any person who violates any provision of this Article shall be liable in a civil action brought by either the district attorney or independent counsel, appointed by the City Attorney, for an amount up to one thousand dollars (\$1,000) per violation of this Article.
- (b) No civil action alleging a violation of this Article may be filed against a person pursuant to this section if a criminal prosecution arising out of the same allegations is pending.

SEC. 2-13.06 VIOLATION OF TITLE; PROBABLE CAUSE; HEARING;

NOTICE; ORDER.

- (a) If evidence of a violation of this Article is presented to the City Clerk, she/he shall consult with the City Attorney to determine if probable cause exists to either refer the matter to the District Attorney or appoint an independent counsel to serve as a hearing officer. Such hearing officer shall not be an employee of City.
- (b) In the event that the matter is referred to a hearing officer, notice shall be given and a hearing be conducted in accordance with the Administrative Procedures Act contained in the California Government Code. If the hearing officer determines on the basis of the hearing that a violation has occurred, a written order containing findings of fact shall be issued which may require the violator to:
 - (1) Cease and desist violation of this Article;
 - (2) Pay a monetary penalty of up to one thousand dollars (\$1,000) per violation to the General Fund of the City.

If it is determined, after a hearing, that no violation of this Article has occurred, an order so stating shall be prepared.